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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

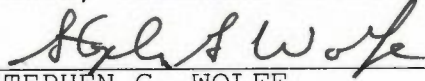
UNITED STATES OF AMERICA,) No. CR 02-938-GHK
)
Plaintiff,) <u>GOVERNMENT'S RESPONSE TO</u>
) <u>DEFENDANT McELHINEY'S MOTION TO</u>
v.) <u>CONTINUE TRIAL DATE</u>
)
MICHAEL PATRICK McELHINEY,)
)
Defendant.)
)
)

Plaintiff United States of America hereby responds to
defendant Michael Patrick McElhiney's Motion to Continue Trial
Date, filed under seal.

Dated: April 28, 2006

Respectfully submitted,

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LOS ANGELES

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GOVERNMENT'S RESPONSE TO MOTION TO CONTINUE TRIAL

Defendant McElhiney has filed a motion, which he seeks to file under seal, to continue the date of his trial, now set for October 10, 2006. Because the government has not been served with defendant McElhiney's motion, the government does not know what grounds defendant advances or whether they are related in any way to defendant's pro se status, or whether defendant moves to sever his trial from that of defendant Steve Loren Scott, or continue the trial for both.

In any event, the government does not oppose defendant McElhiney's motion to continue the date for his trial. Indeed, the government makes this response to submit respectfully that a severance of defendant McElhiney in order to continue the trial date for defendant McElhiney while holding trial for co-defendant Scott as scheduled on October 10, 2006 would (1) further the overall efficiency and conservation of judicial and related resources in this case, (2) address whatever concerns prompt defendant McElhiney's motion to continue, and (3) provide a prompt and efficient resolution of the charges against defendant Scott.

The government submits this proposal because of the great efficiencies in trying defendant McElhiney along with defendant David Michael Sahakian, since the charges against these two defendants are very extensive, and virtually identical. In contrast, the charges against defendants McElhiney and Scott have little overlap.

1 Defendant McElhiney is charged in Counts 1, 2, 3, 6, 7,
2 and 8 of the First Superseding Indictment ("the Indictment").
3 Defendant Sahakian is charged in the same counts. Defendant
4 Scott, however, is charged only in Counts 1, 2 and 8.

5 Within Count 1, defendant McElhiney is charged in
6 Racketeering Acts 29, 30, 34, 37, and 45. Defendant Sahakian is
7 charged in the identical Racketeering Acts, plus Acts 10 and 20.
8 Defendant Scott is charged in Racketeering Acts 9, 37, 45, and
9 46.

10 With respect to the capital charges in the Indictment,
11 defendant McElhiney is eligible for the death penalty under
12 Counts 3, 6, 7, and 8, and the Attorney General has determined to
13 seek the death penalty against defendant McElhiney for all four
14 counts. Defendant Sahakian is also eligible for the death
15 penalty under the same counts. The Attorney General's decision
16 on whether to seek the death penalty against defendant Sahakian
17 is due on December 19, 2006. (In an earlier prosecution of
18 defendant Sahakian in the Southern District of Illinois involving
19 charges essentially identical to Count 8 of the Indictment, the
20 Attorney General decided to seek the death penalty against
21 defendant Sahakian). Defendant Scott was eligible for the death
22 penalty only under Count 8, but the Attorney General has decided
23 not to seek the death penalty against defendant Scott.

24 A trial of the Indictment against defendant McElhiney alone
25 would require 5-8 months, depending upon the defense case and
26 whether the trial reached a penalty phase. A trial of the
27

1 Indictment against defendant Sahakian alone would require the
2 same 5-8 months, depending upon the defense case and whether the
3 trial reached a penalty phase. Thus, a trial of defendants
4 McElhiney and Sahakian together would take little longer than a
5 trial of either alone. A trial of the Indictment against
6 defendant Scott alone, however, would probably require less than
7 one month. Trying defendant Scott along with defendant McElhiney
8 probably adds an additional week to the trial of defendant
9 McElhiney alone.

10 Separating the trials of defendants Sahakian and McElhiney
11 requires very extensive, and almost entirely duplicative,
12 expenditure of resources by not only the Court, but by the U.S.
13 Marshals Service. Assuming that the Attorney General decides to
14 seek the death penalty against defendant Sahakian, if trial
15 against defendant McElhiney proceeded separately from that of
16 defendant Sahakian, the Court would be presiding over two nearly
17 identical trials in terms of evidence presented and witness
18 testimony. In addition, great resources must be expended by the
19 jury commissioner in each capital jury selection process.
20 Moreover, many, if not all, of the witnesses that would be called
21 to testify at the trial of defendant McElhiney will also be
22 testifying at the trial of defendant Sahakian. Many of those
23 same witnesses are housed in Witness Security prisons and other
24 locations around the country. Transporting these witnesses (with
25 the particular demands of transporting witnesses in protective
26 custody) requires a significant expenditure of resources by the
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1 U.S. Marshals Service and the Witness Security Program. Trying
2 defendants McElhiney and Sahakian together would thus contribute
3 greatly to reducing the logistical and financial burden of these
4 agencies.

5 In the fall of 2004, at the Court's order, the parties
6 submitted proposed groupings of defendants for trial. In that
7 report, the government suggested that defendants McElhiney and
8 Scott should be tried together. While that seemed appropriate to
9 the government under the circumstances at that time, defendant
10 Sahakian had not yet appeared in this case. With defendant
11 Sahakian in the case, the most logical, efficient groupings of
12 defendants for trial would always place defendants McElhiney and
13 Sahakian together.

14 Conclusion

15 For all the foregoing reasons, the government respectfully
16 submits that defendant McElhiney's motion to continue the date
17 for his trial should be granted with an eye to the combining of
18 defendants McElhiney and Sahakian for trial,¹ and that defendant
19 Scott should be severed from defendant McElhiney and tried alone
20 as scheduled on October 10, 2006.

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25 ¹ On April 27, 2006, the government contacted defendant
26 McElhiney's standby counsel, James Bisnow, to inquire about
27 defendant McElhiney's position on being tried with defendant
Sahakian. On April 28, 2006, Mr. Bisnow reported defendant
McElhiney's response in its totality: "no comment."

CERTIFICATE OF SERVICE

I, CAREY P. CRONIN, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

GOVERNMENT'S RESPONSE TO DEFENDANT McELHINEY'S MOTION TO CONTINUE TRIAL DATE

service was:

☐ Placed in a closed envelope, for collection and interoffice delivery addressed as follows:

☒ Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

☐ By hand delivery addressed as follows:

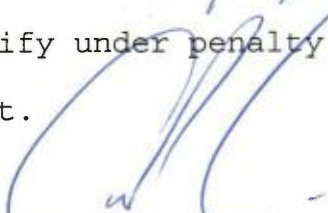
☐ By facsimile as follows:

☐ By messenger as follows:

☐ By federal express as follows:

SEE ATTACHMENT

This Certificate is executed on 4/28/06, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.



CAREY P. CRONIN

ATTACHMENT

UNITED STATES v. BARRY BYRON MILLS, et al.
No. CR 02-938-GHK

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